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**Ernest Lee Tile Contractors, Inc. and Washington
D.C. Building and Construction Trades Council,
AFL-CIO. Case 5-CA-26004**

January 5, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on March 1, 1996, the General Counsel of the National Labor Relations Board issued a complaint on October 3, 1996, against Ernest Lee Tile Contractors, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act by terminating employees Ernest Lindsay, Calvin E. Ramey Jr., Gregory L. Ramey, and Robert S. Wise. On October 31, 1996, the Respondent filed an answer.

Subsequently, on January 22, 1998, the Respondent entered into a settlement agreement with the Charging Party Union and the Region pursuant to which the Respondent agreed to make whole employees Lindsay, Ramey Jr., Ramey, and Wise for any loss of wages and benefits they suffered as a result of their terminations in the amounts of \$2872, \$8616, \$2213, and \$11,205, respectively, less taxes and withholdings, payable on a monthly installment basis. The agreement included an 18-month installment payment plan through which the Respondent agreed to pay Lindsay, Ramey Jr., Ramey, and Wise the monthly amounts of \$159.55, \$478.66, \$122.94, and \$622.50, respectively, less taxes and withholding. Monthly payments were scheduled to commence on January 31, 1998, and end on June 30, 1999. The settlement agreement also contained the following provision:

In consideration of the Board granting the foregoing time-payment schedule, Respondent further agrees that, in the event of non-compliance by failure to make any required payment on the date specified, or to cure any such failure, after notice from the Regional Director, within fourteen days of the specified payment date, the total amount of backpay plus interest, shall become due and payable. Respondent agrees that after 14 days after the failure to make any scheduled payment, on Motion for Summary Judgment by the General Counsel, Respondent's Answer to the instant Complaint shall be considered withdrawn. Thereupon, the Board may issue an Order requiring Respondent to Show Cause why said Motion of the General Counsel should not be granted. The Board may, without the necessity of trial, find all allegations of the Complaint to be true, and to [sic] make findings of fact and conclusions of law

consistent with those allegations adverse to Respondent on all issues raised by the pleadings. The Board may then issue an Order providing full remedy as specified in the Complaint. The parties further agree that a Board Order and United States of [sic] Court of Appeals Judgment may be entered thereon ex parte.

The Respondent made 14 payments under the agreement. Since October 1998, the Respondent has been consistently more than 1 month in arrears. The last payment made by the Respondent, which was due in February 1999, was received by the Region on June 14, 1999. Since that time, the Region has sought, through numerous telephone communications and correspondence, to obtain the Respondent's compliance with the terms of the settlement agreement. The last four installments under the agreement, March through June 1999, now have been unpaid for more than 4 months.

In view of the Respondent's continued failure to make the required payments, and to cure such failure, the Region, by letter of September 28, 1999, exercised its option under the settlement agreement to demand payment in full of the balance of backpay due to the four terminated employees. The Region also notified the Respondent that it would take further legal action if the full amount was not remitted by close of business on October 8, 1999.

At the Respondent's request, the Region extended until October 15, 1999, the date for the Respondent to comply with the terms of the settlement agreement. In addition, the Region offered to accept five monthly payments of \$1000 from the Respondent in lieu of full payment, provided that the Respondent made those payments timely by the 10th of each of the coming 5 months. The Respondent, however, has made no payments.

On November 8, 1999, the General Counsel filed the instant Motion for Summary Judgment with the Board. On November 10, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, in which it offered to make payments in the amount of \$400 per month until the full amount due is paid. In reply, the Region has advised the Board and the Respondent that it is willing to accept and disburse such monthly payments if the Respondent complies with the Region's revised payment schedule. Thus, in view of the Respondent's response, the allegations in the General Counsel's motion are undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause

is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Here, according to the uncontroverted allegations in the Motion for Summary Judgment, although the Respondent initially filed an answer to the complaint, the Respondent thereafter entered into a settlement agreement in which it agreed that if it failed to comply with the settlement, its answer would be considered to be withdrawn. Such noncompliance has occurred. We therefore find that the Respondent's answer has been withdrawn by the terms of the January 22, 1998 settlement agreement, and that, as further provided in that settlement agreement, all the allegations of the complaint are true.¹

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Maryland corporation with an office and place of business in Tuxedo, Maryland, has been engaged as a tile contractor in the construction industry doing commercial construction. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in States other than the State of Maryland. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

In around early October 1995, the Respondent's employees Ernest Lindsay, Calvin E. Ramey Jr., and Robert S. Wise, engaged in concerted activities with each other for the purposes of mutual aid and protection by discussing the Respondent's failure to pay the scale wages required on federally funded Davis-Bacon jobs. On about October 6, 1995, employee Ramey Jr. engaged in concerted activities with other employees for the purposes of mutual aid and protection by writing a letter to the government contact person on one of the Respondent's jobsites to report that the Respondent was not paying the correct wages required on federally funded Davis-Bacon jobs.

In around late October or early November 1995, employees Lindsay and Wise concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by demanding that the Respondent pay the wage scale required on federally funded Davis-Bacon jobs.

On about October 30, 1995, the Respondent terminated employees Calvin E. Ramey Jr. and Gregory L. Ramey. The Respondent terminated Calvin E. Ramey Jr. because he engaged in the conduct described above, and to discourage employees from engaging in these or other concerted activities. The Respondent terminated Gregory L. Ramey because the Respondent associated him with the above-described protected concerted activity of his brother, Calvin E. Ramey Jr.

On about December 7, 1995, the Respondent discharged employees Lindsay and Wise. The Respondent discharged employees Lindsay and Wise because they engaged in the conduct described above, and to discourage employees from engaging in these or other concerted activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by terminating employees Ernest Lindsay, Calvin E. Ramey Jr., Gregory L. Ramey, and Robert S. Wise, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with interest. Back-pay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful terminations, and to notify the four employees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Ernest Lee Tile Contractors, Inc., Tuxedo, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating employees because they engage in concerted activities with each other for the purposes of mutual aid and protection by discussing the Respondent's failure to pay the scale wages required on feder-

¹ See *JAЕ Consulting & Development*, 326 NLRB No. 40 (1998); *U-Bee, Ltd.*, 315 NLRB 667 (1994).

ally funded Davis-Bacon jobs; by writing letters to the government contact person to report that the Respondent was not paying the correct wages required on federally funded Davis-Bacon jobs; by complaining to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees; and by demanding that the Respondent pay the wage scale required on federally funded Davis-Bacon jobs; or terminating employees to discourage them from engaging in these or other concerted activities.

(b) Terminating employees because the Respondent associates the employees with the protected concerted activity of other employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Ernest Lindsay, Calvin E. Ramey Jr., Gregory L. Ramey, and Robert S. Wise full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Ernest Lindsay, Calvin E. Ramey Jr., Gregory L. Ramey, and Robert S. Wise whole for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful terminations of Ernest Lindsay, Calvin E. Ramey Jr., Gregory L. Ramey, and Robert S. Wise, and, within 3 days thereafter, notify them in writing that this has been done and that the terminations will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Tuxedo, Maryland, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the

Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 30, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 5, 2000

Sarah M. Fox,	Member
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Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT terminate employees because they engage in concerted activities with each other for the purposes of mutual aid and protection by discussing our failure to pay the scale wages required on federally funded Davis-Bacon jobs; by writing letters to the government contact person to report that we are not paying the correct wages required on federally funded Davis-Bacon jobs; by complaining to us regarding the wages, hours, and working conditions of our employees; and by demanding that we pay the wage scale required on federally funded Davis-Bacon jobs; or terminate employees to discourage them from engaging in these or other concerted activities.

WE WILL NOT terminate employees because we associate the employees with the protected concerted activity of other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, within 14 days from the date of this Order, offer Ernest Lindsay, Calvin E. Ramey Jr., Gregory L. Ramey, and Robert S. Wise full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Ernest Lindsay, Calvin E. Ramey Jr., Gregory L. Ramey, and Robert S. Wise whole for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with interest.

WE WILL, within 14 days from the date of this Order, expunge from our files any and all references to the unlawful terminations of Ernest Lindsay, Calvin E. Ramey Jr., Gregory L. Ramey, and Robert S. Wise, and, WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the terminations will not be used against them in any way.

ERNEST LEE TILE CONTRACTORS, INC.